



Federal Appropriations Process

Legal Process and Guidance



Formulation Process

- OMB sets “targets” for agencies to meet for overall President’s budget
- Agencies work internally to meet those targets or request and justify “over-target” amounts
- Agency request sent to OMB
- OMB “passes back” the budget, last chance for agencies to appeal



President's Budget

- Once finalized, all agency documents are to match the President's request
- Agencies are to provide “frank and complete answers to all questions”
- Deliberations within the agency or between OMB and the agency are “confidential” and not to be disclosed
- Expected to support the President's request and seek changes through OMB process



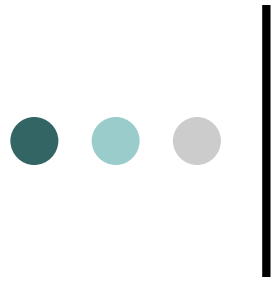
Timeline

- Spring Call inside agency
- Summer formulation process inside the agency
- Pass request to OMB in late summer/fall
- November “pass-back”
- December, budget finalized
- February, President’s budget released



Congressional Timeline

- February, receive President's request
- April, passes concurrent resolution on the budget, setting estimates and outlays
- June 30, House to finish action on appropriation bills, Senate follows
- September 30, all appropriations for following FY to be in place



Sources

- U.S. Code, Title 31
 - § 1104 puts authority for requests with the President, allows for regs
 - § 1105 sets out content and timeline
 - § 1108 sets out requirement for agency budget request to the President



Executive Order 12088

- Ensures compliance with pollution control standards
- Issued in 1978, amended in 1987, never repealed
- “The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.”



OMB Guidance

- Circular A-11, issued yearly (June 26, 2008 is most recent)
- Section 22 governs communications with Congress, the Public
- Budget deliberations are “confidential”
- Clearance required by OMB before disclosure
- Guidance, not regulation (APA issue)



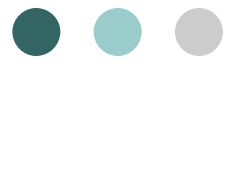
Appropriations

- Lump-sum appropriations for “non-defense environmental cleanup activities” and “defense environmental cleanup activities”
- Broadly defined
- Line items set out in report, not statute
- All funds in the account are legally available for the purposes of the appropriation



Movement of Funds

- Transfers – movement between appropriations (a.k.a. “accounts”)
 - DOE no longer has DOE-wide authority to transfer funds, has limited authority to transfer defense authorized funds
- Reprogrammings – movement between activities *within* an appropriation



Reprogrammings

- Inherent in lump-sum appropriations (*Lincoln v. Vigil*, 508 U.S. 182, 192 (1993))
- DOE policy is to comply with Congressional report language on reprogrammings



Shortfalls

- Judgment Fund may or may not be available
- All funds in the account funding the activity may be legally available
- May need to reprogram funds (no transfer, even with authority)
- May need to go to OMB/Congress with a request for a deficiency appropriation (31 U.S.C. § 1107)